

***United States Court of Appeals
for the Second Circuit***



APPENDIX

To be argued by
MICHAEL R. McGEE

76-1445

United States Court of Appeals

FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Appellee,

vs.

GEORGE EDWARD MacINTYRE,

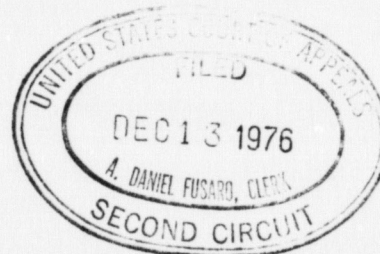
Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK.

APPENDIX OF DEFENDANT-APPELLANT
GEORGE EDWARD MacINTYRE

SIEGEL, McGEE, KELLEHER,
HIRSCHORN & MUNLEY,
Attorneys for Defendant-Appellant,
George Edward MacIntyre,
426 Franklin Street,
Buffalo, New York 14202,
(716) 881-5800.

BATAVIA TIMES, APPELLATE COURT PRINTERS
A. GERALD KLEPS, REPRESENTATIVE
20 CENTER ST., BATAVIA, N. Y. 14020
716-843-0457



PAGINATION AS IN ORIGINAL COPY

TABLE OF CONTENTS

APPENDIX

	<u>PAGE</u>
Government's Request to Charge	1a
Defendant's Request to Charge	10a
Transcript of Court's Jury Charge	16a
Notice of Appeal	34a



UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

THE UNITED STATES OF AMERICA,

Plaintiff

CR. 1974-192

vs.

GEORGE EDWARD MCINTYRE,

Defendant

GOVERNMENT'S REQUEST TO CHARGE

REQUEST NO. 1 - Title 18, U.S.C., § 545

Title 18, United States Code, Sec. 545 (second paragraph) makes it a crime for a person to fraudulently or knowingly import or bring into the United States any merchandise contrary to law.

REQUEST NO. 2 - Essential Elements

There are three essential elements to this violation:

1. That the defendant imported or brought merchandise into the United States.

2. That this was done in a manner which was contrary to law.

3. That the defendant acted fraudulently or knowingly while doing so.

REQUEST NO. 3 - Element No. 1. Imported or Brought
Merchandise into the United States.

You must first consider whether the defendant imported or brought the coins into the United States. If you find that he did, you must next consider the question as to whether or not these Canadian coins constitute merchandise. Foreign coins which are in current circulation, with one exception, are considered as merchandise under the law. That exception is if such coins are imported for monetary purposes. If they are considered as being imported for monetary purposes then they constitute an intangible under the law and do not constitute merchandise.

In deciding whether these coins constitute merchandise you must therefore decide whether or not these coins were imported for monetary purposes.

Monetary means of or relating to money. In order to be exempted from merchandise these coins would have to be imported for a purpose of or relating to money. Webster's Third New International Dictionary, Merriam-Webster, 1969.

This is a question as to the state of mind of the defendant as to his purpose in bringing these coins into the United States. If you find the coins were not imported for monetary purposes, then you must find they constitute merchandise and go on to consider the rest of the elements of the crime. However, if you find that these coins were imported for monetary purposes, then these coins are not merchandise under the law and you need go no further in your deliberations but must vote to acquit the defendant.

MEMORANDUM OF LAW IN SUPPORT OF GOVERNMENT'S
REQUEST TO CHARGE NO. 3

In the case of Lozano v. U.S., 17 F.2d 7, (5th Cir., 1927) the definition of merchandise under the Tariff Act was held to include foreign coins. It should be noted that in the Lozano case the Court was interpreting the word "merchandise" as used in the

predecessor of Title 19, U.S.C., § 1461 which is the statute set forth in the indictment under which it is alleged the defendant brought the coins in "contrary to law".

Also see, Gregory v. Morris, 96 U.S. 619 (1877), wherein the Supreme Court stated gold coins could in one sense be considered as money, and in another sense be considered as an article of merchandise. Page 625. In that case, as in the case at bar, the value of the metal contained in the coins exceeded the face value of the coins.

Under the Custom's laws of the United States merchandise is defined as ". . . goods, wares, and chattels of every description . . .". Title 19, U.S.C., § 1401(c). Under the above definition, foreign coins constitute merchandise both under the term "goods" and under the phrase "chattels of every description".

Foreign coins have been held to fall within the description of "goods" at common law. The Elizabeth and Jane, 2 Mason, 407, 408, as cited in Patton v. Brady, 184 U.S. 608 (1901), at page 613.

Chattel is defined by Black's Law Dictionary, revised 4th Ed. 1968 as an article of personal property or any species of property not amounting to a freehold or fee in land and Webster's Third New International Dictionary, Merriam-Webster, 1969, defines chattel as an item of tangible, movable or immovable property except real estate. Courts may consult dictionaries in making their determination of the common meaning of a tariff term. E. Dillingham, Inc. v. United States, 358 F.Supp. 1295 (U.S. Customs Ct., 1973).

Under the above two definitions the term chattel clearly includes a tangible object such as a coin.

The phrase in Title 19, U.S.C., § 1401(c) of "chattels of every description" [emphasis added] indicates that the term chattel as used is meant to be an all-inclusive concept. Therefore, Canadian coins would be covered under the definition of chattel and would therefore constitute "merchandise" under this section.

Title 19, U.S.C., § 1202 sets forth the Tariff Schedules of the United States. Headnote No. 5 of

that section (which can be located on page 194 in the United States Code Annotated) exempts from the purview of the Tariff Act "currency (metal or paper) in current circulation in any country and imported for monetary purposes," [emphasis added] and classifies it as an intangible. The coins which are the subject matter of the Indictment in this case were in current circulation in Canada on the date of importation. The issue then is whether or not the coins were "imported for monetary purposes." This should be a jury question as to the state of mind of the defendant when he brought the coins into the United States.

There is no special definition of the phrase "monetary purposes" defined either by a statute or case law.

REQUEST NO. 4 - CONTRARY TO LAW.

In the Indictment, it is alleged that the defendant brought these coins into the United States "contrary to law". That the coins were not unladdened in the presence of and inspected by a Customs officer at the first port of entry at which they arrived into

the United States as is required by Title 19, U.S.C., Sec. 1461. This means that merchandise when brought into the U.S. must be declared and presented for inspection to a Customs officer. U.S. v. Sutton, 446 F.2d 916 (9th Cir. 1971). If you find that the defendant when entering the United States did not declare and present the Canadian coins for inspection after having a reasonable opportunity to do so, then you should find that these coins were imported and brought into the U.S. "contrary to law". It is immaterial that the coins were subsequently taken from the defendant's vehicle by the Customs officers and inspected by them after a search of the vehicle. If the defendant did not declare the coins after having reasonable opportunity to do so then the coins were brought in "contrary to law".

REQUEST NO. 5 - Element No. 3. That the Defendant
Acted Fraudulently or Knowingly.

An act is done "fraudulently" if done wilfully and with the intent to deceive. An act is done wilfully if done voluntarily and intentionally, and with the specific intent to do something which the law forbids;

that is to say with bad purpose either to disobey or to disregard the law. Devitt and Blackmar, Federal Jury Practice and Instructions, Second Edition, Section 26.05.

In showing that the defendant acted fraudulently, the Government does not have the burden of showing that the defendant attempted to defraud the United States of revenue. It is not necessary to show that the items brought into the United States were subject to duty. The defendant's actions could still be considered as fraudulent even if such items were not subject to duty. It is the intent not to declare the merchandise which the law forbids and not the intent to evade paying duty. U.S. v. McKee, 220 F.2d 266, 269 (2d Cir. 1955).

An act is done "knowingly" if done voluntarily and intentionally, and not because of mistake or accident or other innocent reason. The purpose of adding the word "knowingly" was to insure that no one would be convicted for an act done because of mistake or accident or other innocent reason. Devitt and Blackmar, Federal Jury Practice and Instructions, Second Edition, Section 26.05.

DATED: Buffalo, New York, May 10, 1976

Respectfully submitted,

RICHARD J. ARCARA
United States Attorney
Western District of New York
Office and P.O. Address
502 United States Courthouse
Buffalo, New York 14202

RICHARD E. MELLENGER,
Assistant United States Attorney,
of Counsel.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

THE UNITED STATES OF AMERICA

Plaintiff

vs.

CR 1974-192

GEORGE EDWARD McINTYRE

Defendant

DEFENDANT'S REQUEST TO CHARGE

SIEGEL, McGEE, BARTLO, KELLEHER & HIRSCHORN
Attorneys for Defendant
426 Franklin Street
Buffalo, New York 14202

MICHAEL R. McGEE, ESQ.
of counsel

REQUEST A

You should first consider whether the defendant brought or imported any merchandise into the United States.

If you find that the defendant brought certain Canadian coins into this Country, you must determine whether these coins constitute "merchandise".

The Customs Act defines "merchandise" as goods, wares and chattels of every description. That is, you must decide whether goods, wares and chattels of every description includes the Canadian coins you have heard about in this case.

If you have a reasonable doubt that the Canadian coins in this case constitute "merchandise" then you must return a verdict of not guilty.

If you are convinced beyond a reasonable doubt that the Canadian coins are merchandise then you should go on to Element Number Two (2).

REQUEST B

You must then consider whether the Canadian coins were brought into the United States contrary to law.

The law provides that all merchandise and baggage brought in from any contiguous country, except as provided by law or regulation of the Secretary of Treasury, shall be unladen in the presence of and be inspected by a Customs Officer at the first Port of entry at which the same shall arrive.

However, the Customs Regulations provide that currency in current circulation in any country and imported for monetary purposes is not subject to the provisions of the Customs law.

Monetary purposes is not defined in the law but the dictionary defines it as having to do with money.

You may consider this regulation in determining whether the Canadian coins were brought into this country in a manner contrary to law.

If you have a reasonable doubt as to whether the Canadian coins were brought into the United States in a manner contrary to law you must return a verdict of not guilty.

If you are convinced beyond a reasonable doubt that the Canadian coins were imported contrary to law then you should go on to Element Three (3).

MEMORANDUM IN SUPPORT OF REQUEST TO CHARGE

The defense does not object to Government's Request Number One (1) or Government's Request Number Two (2).

Government Request Number Five (5) is acceptable if the Court deletes "The defendant's action could still be considered fraudulent even if such items were not subject to duty. It is the intent not to declare the merchandise which the law forbids and not the intent to evade paying duty."

U. S. vs. McKee 220 F2d 266 (2nd Cir. 1955) held that "it is no longer necessary to show that the item or items introduced clandestinely into the United States were subject to duty." Neither McKee nor the statute speak of "intent not to declare". The language objected to above is repetition and goes beyond McKee. In fact Lozano v. U.S. 17 F2d 7 (5th Circuit 1927) at page 8, which is cited by the government (p. 3 Request to Charge) seems to find nothing wrong with an intent not to declare. It should be noted at this point that for reasons stated below the defense does not consider Lozano as compelling authority.

The defense objects to Government's Request three (3) and four (4) and respectfully requests the attached requests (A) and (B) be given instead.

The instruction pertaining to element Number One (1) (that defendant imported or brought merchandise into the United States) is essentially an explanation of the term "merchandise" as used in Title 18 U.S.C. Section 545. That term is defined in Title 19 U.S.C. Section 1401(c) and that statutory definition should be charged to the jury.

Headnote Number Five (5) of Title 19 U.S.C. Section 1202 (Tariff Schedules) which provides that ". . . currency (metal or paper) in current circulation in any country and imported for monetary purposes" is an "intangible" and not subject to provisions of schedules, is not relevant to a definition of merchandise. Rather, this headnote is relevant to element Number Two (2) (contrary to law). To charge this Headnote in connection with the definition of merchandise is confusing to the jury. The specific statutory definition of merchandise should not be modified by the "General Headnote and Rules of Interpretation". Customs regulations cannot be elevated to statutory. Czarni Kow-Rionda Co. v. U.S. 468 F2d 211 (1972).

This headnote also lends nothing to the definition of merchandise since "monetary purposes" is not defined. In effect, the government's request would replace a statutory definition with term from a regulation which is not defined. Certainly this does not aid the jury.

In considering the Lozano case, we respectfully call the Court's attention to the following: Lozano is a 1927 case dealing with a civil forfeiture action; the Court reversed a directed verdict in favor of the government and sent the case back for a new trial; any statements with regard to "merchandise" are dicta and are not necessary to the Court's holding and the case has apparently never been cited or followed since in any reported decision. Furthermore the case deals with Mexican gold coins not in circulation in the United States which is totally different from our situation wherein the Canadian coins involved here are in circulation in both the United States and Canada.

In view of the above, the Lozano case should be considered with great caution.

We respectfully request that the Court charge the attached
Defense Requests (A) and (B).

Respectfully submitted,

SIEGEL, McGEE, BARTLO, KELLEHER & HIRSCHORN
MICHAEL R. McGEE, ESQ. of counsel
Attorneys for Defendant
426 Franklin Street
Buffalo, New York 14202
(716) 881-5800

CHARGE OF THE COURT

THE COURT:

Ladies and gentlemen, when you go to the jury room, you will have the indictment and the various exhibits which are in evidence in this case. It will be your job to deliberate, consider the arguments of the attorneys here, consider the testimony of the witnesses, consider my charge to you on the law and out of that mix, you will arrive at a verdict which must be by unanimous vote of the jury. In order to arrive at a verdict in this case, you must all agree upon the verdict.

The indictment will be given to you not as evidence, as I told you at the very beginning, but only as a guide to you so that when you come back to the court, you will be able to conveniently announce your verdict in open court. At that time, and it is wise to pick one of your number as a foreman who can be chairman of your deliberation; who can be the person if you have a question can

H. T. Noel & E. F. KnisleyOFFICIAL REPORTERS, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

1 come into court and be your spokesman and
2 can be the person when asked by Mr. White,
3 the clerk, about the verdict, will be
4 able to orally announce your unanimous
5 verdict in open court.

6 "Deliberation" means that you not
7 only give your considered, conscientious
8 views about the evidence in the case, but
9 you also listen to the considered views
10 of your fellow jurors and out of this
11 mix, you arrive at your verdict. You
12 certainly should not let enter into your
13 deliberation any idea of prejudice or
14 bias or sympathy or sentence. Sentence,
15 if there shall be any is left to the
16 Court. It is your job only to determine
17 guilt or the innocence of the defendant
18 here in this case.

19 You will consider, certainly, the
20 direct testimony. That is what the
21 agents saw at the bridge, what they said
22 and what the defendant responded.

23 In addition to that, you may consider
24 circumstantial evidence and in this case,
25 as I will explain in a few minutes, that

1 is probably a very important consideration.
2 You know from certain facts which you can
3 find are reliable from those facts that
4 then you can infer that certain other
5 things happened. This generally is what
6 we call circumstantial evidence. We use
7 it all the time in our daily life and
8 there is no reason that we should not be
9 able to apply it when we are in court in
10 considering matters, but you know that
11 it must be reasonable and it must be
12 such that will lead you to very clear
13 conclusions. If there are, in using
14 circumstantial evidence, if you find that
15 certain facts point to one conclusion
16 which points to innocence and another
17 conclusion which just as reasonably points
18 to guilt, then because this is a criminal
19 case and the stakes are so high, you must
20 accept the conclusion, - the inference
21 which points to innocence.

22 I think that probably many of you
23 have heard the example before about, -
24 the rain now seems to be an appropriate
25 example. Maybe I should find another

1 example and we can get rid of some of
2 the rain, but we know if we retire at
3 night and the streets are dry and when
4 we arise in the morning we find that the
5 lawns and the streets are wet, then we
6 can come by circumstantial evidence,
7 even though we did not see it or hear
8 it rain during the night, we can conclude
9 reasonably that it did, in fact, rain
10 during the evening. On the other hand,
11 if we were gone for a few days and the
12 streets were wet when we returned, it
13 may be difficult to say exactly when it
14 did rain. We may be able to conclude
15 that it rained when we were gone. We may
16 suspicion and suspect that the rain
17 happened just a short time ago, but on
18 the other hand, because of other general
19 climatic conditions, it may be difficult
20 to come to a definite conclusion about
21 that, so we must handle circumstantial
22 evidence with care.

23 We have said here that you are to
24 make up your mind in this case based upon
25 the testimony of the witnesses and the

1 exhibits which have been introduced into
2 evidence. In treating of witnesses'
3 testimony, there are some considerations
4 which are well to keep in mind. You
5 should listen, of course, not only to the
6 direct testimony, but also to the cross
7 examination of each and every witness.

8 It is up to you to determine the
9 credibility of the witnesses and how much
10 weight you will give to their testimony.
11 You will consider how much the witness
12 is either supported or contradicted by
13 other evidence in the case; whether the
14 witness is worthy of belief. You may
15 take into consideration the witness'
16 appearance, attitude, behavior, his
17 interest in the outcome of the case, if
18 any; his relationship to one side or the
19 other in the suit; the inclination of the
20 witness to speak truthfully; the
21 probability or improbability of his
22 testimony. You may consider any conscious
23 or unconscious bias or prejudice that the
24 witness may have toward either side of
25 the lawsuit; what hope of reward or

1 remuneration the witness may have if the
2 verdict should be one way or another.
3 You may consider the demeanor and manner
4 of the witness on the stand.

5 You should think about his intelli-
6 gence, motive, state of mind. You will
7 determine whether the witness had the
8 opportunity to see or to hear what he
9 testified to; whether he could see or
10 hear everything he testified to and
11 whether or not passage of time has dimmed
12 his recollection.

13 If there are inconsistencies or
14 discrepancies in the witness' testimony,
15 that does not mean that you must dis-
16 credit his testimony entirely. You
17 should, in weighing the effect of a dis-
18 crepancy, consider whether it pertains to
19 a matter of importance or an unimportant
20 detail and whether the discrepancy results
21 from innocent error or intentional false-
22 hood. You may use, ladies and gentlemen,
23 your common sense in determining what
24 testimony to believe and what facts you
25 can conclude from the witness' testimony.

1 In this case, as in all criminal
2 cases, it is incumbent upon the Government
3 to prove the guilt of the defendant beyond
4 a reasonable doubt of each and every
5 element of the crime charged. A reason-
6 able doubt is a fair doubt based upon
7 reason and common sense and arising from
8 the state of the evidence. It is rarely
9 possible to prove anything to an absolute
10 certainty. Proof beyond a reasonable
11 doubt, therefore, is established if the
12 evidence is such as you would be willing
13 to rely and act upon it in the most
14 important of your own affairs.

15 As I have told you before, a defend-
16 ant is not to be convicted on suspicion,
17 conjecture, surmise, guess or anything
18 similar to that. A reasonable doubt may
19 arise not only from the evidence produced,
20 but also from the lack of it. Since the
21 burden is upon the prosecution to prove
22 the accused guilty beyond a reasonable
23 doubt of every essential element of the
24 crime charged, a defendant has the right
25 to rely upon failure of the prosecution

H. T. Noel & E. F. Knisley

OFFICIAL REPORTERS, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

1 to establish such proof.

2 The law does not impose upon a
3 defendant the duty of producing any
4 evidence. A reasonable doubt is such a
5 doubt as is based upon reason and as
6 appeals to your power of logic. It is
7 a doubt arising out of something tangible
8 in the evidence in the case or something
9 lacking in the evidence.

10 If you feel uncertain and not fully
11 convinced that a defendant is guilty of
12 the crime charged and you believe you are
13 acting in a reasonable manner and you
14 believe a reasonable man or woman in a
15 matter of like importance would hesitate
16 to convict because of such a doubt as you
17 have, that is a reasonable doubt to the
18 benefit of which a defendant is entitled.
19 If you have such a doubt, you must
20 acquit.

21 In this case, turning to the charge
22 itself, you will, - I will deliver the
23 indictment to you so that I will not
24 read it in full, but again remember that
25 the indictment is not any evidence at all

1 of any criminal conduct on the part of
2 Mr. MacIntyre. It is given to you as a
3 guide only and it is filed here so that
4 he may defend himself and know what the
5 charge is so that he can prepare his
6 defense.

7 We are concerned with the events
8 in the charge of April 19, 1974 and it
9 is charged that that day that Mr.
10 MacIntyre fraudulently and knowingly
11 imported from Canada certain merchandise.
12 That is, about one hundred pounds of
13 Canadian silver coins packaged in four
14 bags having a face value of \$1,999.80,
15 contrary to law in that the coins were
16 not unladen in the presence of and
17 inspected by a Customs officer at the
18 first point of entry at which such
19 merchandise arrived in the United States.

20 The charge here is based upon a
21 violation of Section 1461 of Title 19
22 and Title 18, Section 545. That par-
23 ticular Section 545 makes it a crime
24 for a person to fraudulently or knowingly
25 import or bring into the United States

1 any merchandise contrary to law.

2 There are three essential elements
3 to this particular violation. Firstly,
4 that the defendant imported or brought
5 merchandise into the United States.

6 Secondly, that this was done in a
7 manner which was contrary to law.

8 Third, that the defendant acted
9 fraudulently or knowingly while doing
10 so and as to each one of these elements,
11 it is incumbent upon the Government to
12 prove guilt beyond a reasonable doubt.

13 The first thing you will take up
14 is whether defendant imported or brought
15 these coins into the United States.
16 Next, you will then determine whether or
17 not, under the law, as I charge it to
18 you, whether these Canadian coins
19 constituted merchandise.

20 The term "merchandise" is defined
21 in the statute as goods, wares or
22 chattels of every description. I charge
23 you in this case that these foreign
24 coins, if they were brought into the
25 United States for normal use, - that is,

1 for money to purchase goods, then they
2 are not considered as merchandise. If
3 they were imported for the every day
4 use as money, then they constitute an
5 intangible under the law and do not
6 constitute merchandise. Otherwise, if
7 they are brought in for any other purpose,
8 then they would be considered merchandise
9 under the law.

10 In this case, ladies and gentle-
11 men, as I told you before, the intent
12 of the defendant in this case is most
13 important. It is here, as I think Mr.
14 Mellenger in his summation summed it up
15 this way, he said it is difficult to
16 look into a man's mind and determine on
17 examination what he is thinking. You
18 have to look into what he did and then
19 we turn, of course, from acts to deter-
20 mining intent. That is, by the use of
21 circumstantial evidence.

22 You may consider his activities on
23 that day and you may consider his activities
24 on the other days; what was said to him
25 by the officer; the declaration that he

1 made on the prior bills of lading; the
2 activities which he recounted to the
3 officer in determining what his intent
4 was at this particular time.

5 These are questions for you to de-
6 termine. It is important to keep in mind,
7 though, that he is only charged for
8 criminal conduct on this one particular
9 day. The other evidence in the case here
10 was only put in evidence to determine
11 what his intent was on the day of 19
12 April, 1974 when he appeared at the
13 Lewiston Bridge.

14 You must resolve the state of mind
15 of the defendant as to his purpose in
16 bringing these coins into the United
17 States. If you find the coins were not
18 imported for normal use as money, then
19 you must find they constitute merchandise
20 and go on to consider the other elements
21 in the crime charged. If you find that
22 the coins were imported for the normal
23 use as money, then the coins are not
24 merchandise under the law and you need go
25 no further in your deliberation, but you

1 would vote to acquit.

2 In this indictment, it is alleged
3 that the defendant brought these coins
4 into the United States contrary to law
5 in that the coins were not unloaded in
6 the presence of and inspected by a
7 Customs officer at the first port of
8 entry at which they arrived into the
9 United States. This is a requirement of
10 Title 19, Section 1461. If the coins
11 were indeed merchandise, the individual
12 importing any merchandise must declare
13 it and present it for inspection to a
14 Customs officer. If you find that the
15 defendant, when entering the United
16 States did not declare and present the
17 Canadian coins for inspection after having
18 a reasonable opportunity to do so, then
19 you would find that the coins were
20 imported and brought into the United
21 States contrary to law.

22 It is immaterial that the coins were
23 subsequently taken from the defendant's
24 vehicle by the Customs officers and
25 inspected by them following a search

1 of the vehicle. If the defendant did
2 not declare the coins after having reason-
3 able opportunity to do so, then the
4 coins were brought in contrary to law.

5 Again, ladies and gentlemen, what
6 happened at the bridge, what was asked
7 of him, what was said, the manner in which
8 the coins were brought in, all of these,
9 certainly, all of these facts you may
10 consider. First of all, it is up to you
11 to determine the facts and then you may
12 consider all these circumstances in
13 determining whether or not the coins were
14 unladen in the presence of, at the
15 first reasonable opportunity to do so.

16 The Government also has to prove
17 beyond a reasonable doubt that the act,
18 if done, is done fraudulently, and that
19 is it means it was done willfully and
20 with intent to deceive.

21 The term "fraudulently" means with
22 the specific intent to disregard and to
23 disobey the law. An act is done willfully
24 if done voluntarily and intentionally
25 and with the specific intent to do some-

1 thing which the law forbids.

2 In showing that the defendant acted
3 fraudulently the Government does not
4 have the burden of showing that the
5 defendant attempted to defraud the United
6 States of revenue. It is not necessary
7 to show that the items brought into the
8 United States were subject to duty. The
9 defendant's actions could still be con-
10 sidered as a violation of law even if
11 the items are not subject to duty. It is
12 the failure to declare the merchandise
13 which the law forbids and not the intent
14 to evade paying any duty.

15 Perhaps to repeat somewhat, but an
16 act is done under the law knowingly if
17 done voluntarily and intentionally and
18 not because of mistake or accident or
19 other innocent reason such as carelessness.
20 The purpose of adding the word "knowingly"
21 is to make sure that no one can be con-
22 victed for an act done because of mistake
23 or accident or other innocent reason.

24 Just to repeat briefly, ladies and
25 gentlemen, in this case, there are three

1 essential elements which the Government
2 must prove beyond a reasonable doubt.
3 Firstly, that defendant imported or
4 brought merchandise into the United States.
5 Secondly, that this was done in a manner
6 which was contrary to law. Thirdly,
7 that the defendant acted fraudulently
8 or knowingly while doing so. It is up
9 to you to determine from all of the
10 circumstances of the case whether or not
11 the Government has met its burden.

12 At this time, ladies and gentlemen,
13 I will ask you to step into the corridor
14 so that I can consider any further re-
15 quests by the attorneys or any exceptions
16 to the charge.

17
18 (Jury escorted from the courtroom.)
19

20 THE COURT:

Mr. Mellenger.

21 MR. MELLENGER:

22 The Government has no further
23 requests and takes no exception to the
charge, your Honor.

24 THE COURT:

Mr. McGee.

25 MR. MCGEE:

Your Honor, we will except to the

1 charge for the reasons stated in my
2 request that was previously submitted to
3 the Court and I would request that we
4 get a further instruction on circum-
5 stantial evidence, that you cannot have
6 an inference based upon an inference.

7 THE COURT:

All right. I will charge that. Have
8 the jury return, please.

9
10 (Jury returns to the courtroom.)

11
12 THE COURT:

Ladies and gentlemen, it is often
13 said in the law that you may not, in
14 considering circumstantial evidence, -
15 you may not consider an inference based
16 upon an inference. By that I mean that
17 your use of circumstantial evidence must
18 be reasonable and it must be careful.
19 You must take facts from direct evidence
20 and from those, of course, you can
21 infer that certain things happened or that
22 certain other facts are indeed so, but
23 if you then take another step, you must
24 be most cautious, as a matter of fact.
25 It is like trying to look, looking at

2 the events in some foreign country. You
3 can say certain things had occurred and
4 you can infer that certain other things
5 happened, but because our information is
6 not valid in the first place or it may
7 be questionable, then certainly for us
8 to make further inferences as to what is
9 going on somewhere may be difficult, so
10 generally speaking, the use of circum-
11 stantial evidence, use it with care, make
12 sure that the facts you find as a platform
13 are solid and then going from there to
14 not proceed too far with the use of it.

14 Therefore, I will now tell you to
15 go to the jury room and begin your
16 deliberations. We have to excuse the
17 alternate jurors.

18
19 (One male and one female Deputy
20 United States Marshals sworn as custodians
21 of the jury.)

22
23 THE COURT:

23 Mr. Willard and Mr. Wojec, you are
24 excused now from deliberation in this
25 case. We can only go ahead with twelve

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

Plaintiff

vs.

NOTICE OF APPEAL

GEORGE EDWARD Mac INTYRE

Cr. 1974-192

Defendant

NOTICE is hereby given that GEORGE EDWARD Mac INTYRE, defendant above named, hereby appeals to the United States Court of Appeals for the Second Circuit from the judgment of conviction of Title 18 United States Code, Section 545 previously entered resulting from a jury verdict following a jury trial on May 20, 1976 and the sentencing on June 28, 1976.

MICHAEL R. MCGEE
Attorney for Defendant George Edward Mac Intyre
SIEGEL, MCGEE, BARLTO, KELLEHER, & HIRSCHORN
426 Franklin Street
Buffalo, New York 14202

Dated: June 29, 1976
Buffalo, New York

